

FILED

MAR 07 2014

CITY CLERK

SPECIAL ORDINANCE NO. 7, 2014

AN ORDINANCE VACATING A PORTION OF A PUBLIC ALLEYWAY LOCATED IN THE CITY OF TERRE HAUTE, VIGO COUNTY, INDIANA.

BE IT ORDAINED by the Common Council of the City of Terre Haute, Indiana:

SECTION 1. Pursuant to the provisions of I.C. 36-7-3-12, it is desired and deemed necessary to vacate a portion of a Public Alleyway located in the City of Terre Haute, Vigo County, Indiana, which is now laid out and existing in the City of Terre Haute, Indiana, and described as follows:

**Alley and Access Way #1**

All that part of the generally east/west alley and access way bounded:

on the North by:

1. Parcel No. 84-06-33-404-001.000-002

Address: 2400 South 3<sup>rd</sup> Street, Terre Haute, IN 47802

Legal Description: Lots 95, 96, and 97 in George R Preston's Subdivision of part of Krumbhaar's Subdivision of the North West ¼ of the South East ¼ of Section 33, Township 12 North, Range 9 West, in Terre Haute, Indiana.

and on the South by:

2. Parcel No. 84-06-33-404-006.000-002

Address: 2420 South 3<sup>rd</sup> Street, Terre Haute, IN 47802

Legal Description: Lot 99 in George R Preston's Subdivision of part of Krumbhaar's Subdivision of the North West ¼ of the South East ¼ of Section 33, Township 12 North, Range 9 West, in Terre Haute, Indiana.

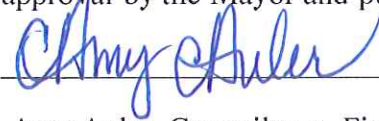
SECTION 2. Be it further ordained that said portion of said public alleyway in the City of Terre Haute, Indiana, above described, be and the same is vacated and will revert to the abutting property, subject to the continuation of any and all existing easement rights for public utilities.

SECTION 3. Be it further ordained that the City Clerk be, and he is hereby directed to furnish a copy of this Ordinance to the Recorder of Vigo County, Indiana, for recording, and to the Auditor of Vigo County, Indiana.

WHEREAS, an emergency exists for the immediate taking effect of this Ordinance, the

same shall be in full force and effect from and after its passage by the Common Council of Terre Haute, and its approval by the Mayor and publication as by law provided.

Presented By: \_\_\_\_\_



Amy Auler, Councilman, First District

Passed in open Council this 15<sup>th</sup> day of April, 2014.

  
Amy Auler, President

ATTEST:


, Chuck Hanley, City Clerk

Presented by me to the Mayor this 16<sup>th</sup> day of April, 2014.

  
Chuck Hanley, City Clerk

Approved by me, the Mayor, this 16<sup>th</sup> day of APRIL, 2014.

  
Duke Bennett, Mayor

Attest: , Chuck Hanley, City Clerk

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each social security number in this document, unless required .

  
William M. Olah

This instrument prepared by: William M. Olah, Wilkinson, Goeller, Modesitt, Wilkinson & Drummy, LLP, 333 Ohio Street, Terre Haute, IN 47807

PETITION FOR VACATION OF A PORTION OF PUBLIC ALLEY

TO THE PRESIDENT AND MEMBERS OF THE COMMON COUNCIL OF THE CITY OF TERRE HAUTE,  
VIGO COUNTY, INDIANA

LADIES AND GENTLEMEN:

Culp Ventures, LLC, as the owner of land abutting a certain platted alley, respectfully petitions and requests the legislative body of the City of Terre Haute, Indiana, to vacate that portion of the platted alley described below pursuant to the provisions of I.C. 36-7-3-12, and in support of this Petition would show to the Common Council of said City as follows:

1. Culp Ventures, LLC, Petitioner, is the owner of the following described real estate located in Vigo County, State of Indiana:

Lots 95, 96, 97, 99, and 100 in George R Preston's Subdivision of part of Krumbhaar's Subdivision of the North West  $\frac{1}{4}$  of the South East  $\frac{1}{4}$  of Section 33, Township 12 North, Range 9 West, in Terre Haute, Indiana.

Said real estate is commonly known as 2400 (north of the subject alley) and 2420 (south of the subject alley) South Third Street, Terre Haute, Indiana.

2. A 16-foot wide alley runs east-west, extending from 3rd Street to 4th Street, said alley, on its western portion being bounded as follows:

On the north, by Lots 95, 96, and 97 in George R Preston's Subdivision of part of Krumbhaar's Subdivision of the North West  $\frac{1}{4}$  of the South East  $\frac{1}{4}$  of Section 33, Township 12 North, Range 9 West, in Terre Haute, Indiana (Parcel No. 84-06-33-404-001.000-002); and

On the south, by Lot 99 in George R Preston's Subdivision of part of Krumbhaar's Subdivision of the North West  $\frac{1}{4}$  of the South East  $\frac{1}{4}$  of Section 33, Township 12 North, Range 9 West, in Terre Haute, Indiana (Parcel No. 84-06-33-404-006.000-002).

That the attached copy of a portion of the April 21, 2004 ALTA/ACSM survey by Tania M. Strug of Civil Designs, LLP highlights in yellow the portion of said public alley which Petitioner seeks to have vacated. Said portion of the public alley to be vacated is the first 130.00 feet running east of 3rd Street a/k/a U.S. Hwy. 41. Petitioner is the owner of all of the property abutting that portion of the alley to be vacated.

2. Pawn It, Inc. is the owner of a parcel that has its southwest corner being the same point as the northeast corner of that portion of the alley to be vacated, but upon this vacation, that parcel of Pawn It, Inc. will inure to no ownership of any part of the alley portion to be vacated; nevertheless, Pawn It, Inc. should arguably be given notice of this Petition.

3. No other landowner adjoins and abuts that portion of the public alley to be vacated, so no landowner will incur loss of direct access into said alley from such other owner's land, but after said vacation, the subject alley will no longer connect to 3rd Street.

4. Petitioner is the owner of all property adjoining and abutting the area to be vacated. Upon the requested vacation, all the length of the subject alley that is co-terminus with the southern boundary of the parcel owned by Pawn It, Inc. will remain unaffected...that is, the subject alley now runs east-west adjacent to the entire southern boundary of the land owned by Pawn It, Inc.--and upon vacation, this fact will not change at all.

3. Petitioner proposes the vacation of that portion of the public alley because:

- the local franchisee of the Pizza Hut located on Petitioner's parcel to the north of the subject alley needs to relocate into a modern facility that meets the franchisor's current standards, and Petitioner is willing to build-to-suit on its parcels, located on both sides of the subject alley, a modern Hut (similar to the Hut at the northeast corner of Lafayette Avenue and Ft. Harrison Road). That new Pizza Hut will not have as much floor area as is found in the existing Pizza Hut, but will be a portion of a new building--a building with one additional spec leasing space. In order to best meet the requirements of the City building and zoning codes, design plans call for that new building to straddle the to-be-vacated alley portion. In that fashion, the new building can be constructed without requiring the existing Pizza Hut to close--i.e. when the new Hut is ready for turn-key occupancy, the current franchisee will merely move across the parking lot into the new building, and the old building will be demolished to make way for more off-street parking
- only these local contractors are bidding on this project: C.H. Garmong & Son, Inc., Hannig, Inc., and Thompson Thrift, so construction jobs on this \$1 million project will go to local persons.

4. The proposed vacation would not hinder the use of the public alley to the east of the contemplated new construction, and all other landowners in the area have, and will continue to have, direct access to the public alleys that exits (and will continue to exit) onto 4th Street. As set forth above, the proposed vacation would not make access to any land by any person by means of a public way difficult or inconvenient; nor would said vacation hinder any member of the public's access to a church, school or other public building or place.

5. The name and address of the only owners of land that abuts or touches that portion of said alley proposed to be vacated is:

Culp Ventures, LLC  
P.O. Box 2038  
Terre Haute, IN 47802

Pawn It, Inc.  
329 E. Voorhees St.  
P.O. Box 10278  
Terre Haute, IN 47801

WHEREFORE, Petitioner respectfully requests and petitions the Common Council of the City of Terre Haute, Indiana, after hearing on this Petition in accordance with law, to:

A) Adopt an Ordinance vacating that portion of the public alley referred to and described above;

B) Cause the Clerk of the City of Terre Haute to furnish copies of said Vacation Ordinance to the County Recorder of Vigo County for recording and to the County Auditor, and to thereupon cause the Recorder to release said Ordinance to the Vigo County Area Planning Department for distribution in

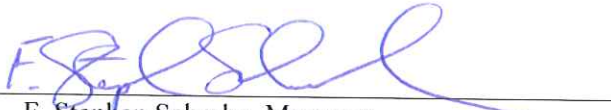
accordance with paragraph 1125.06 of the City's Zoning Ordinance; and

C) For all other proper relief in the premises.

Respectfully Submitted,

Culp Ventures, LLC

By:

  
F. Stephen Schrohe, Manager

Wilkinson, Goeller, Modesitt, Wilkinson & Drummy, LLP  
333 Ohio Street, Terre Haute, IN 47807  
Telephone: (812) 232-4311  
Facsimile: (812) 235-5107

By

  
William M. Olah #9738-84

**AFFIDAVIT**

**OF**

**F. STEPHEN SCHROHE  
MANAGER OF CULP VENTURES, LLC**

COMES NOW F. Stephen Schrohe, and affirms under penalties of law that:

1. Affiant is the sole Manager of Culp Ventures, LLC, an Indiana limited liability company, and as such, is duly authorized to represent and make this Affidavit for and on behalf of Culp Ventures, LLC.

2. Culp Ventures, LLC is a limited liability company lawfully organized and existing under the laws of the State of Indiana.

3. In Affiant's capacity as a Manager of Culp Ventures, LLC, he is in charge of and is familiar with the properties owned by Culp Ventures, LLC. Affiant represents and warrants that Culp Ventures, LLC is the owner of record of the following real estate located in Terre Haute, Indiana, to-wit:

1. Parcel No. 84-06-33-404-001.000-002

Address: 2400 South 3<sup>rd</sup> Street, Terre Haute, IN 47802

Legal Description: Lots 95, 96, and 97 in George R Preston's Subdivision of part of Krumbhaar's Subdivision of the North West ¼ of the South East ¼ of Section 33, Township 12 North, Range 9 West, in Terre Haute, Indiana.

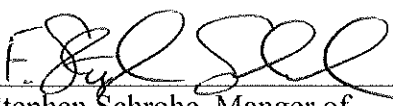
2. Parcel No. 84-06-33-404-006.000-002

Address: 2420 South 3<sup>rd</sup> Street, Terre Haute, IN 47802

Legal Description: Lots 99 and 100 in George R Preston's Subdivision of part of Krumbhaar's Subdivision of the North West ¼ of the South East ¼ of Section 33, Township 12 North, Range 9 West, in Terre Haute, Indiana.

Attached hereto is a true and correct copy of the recorded Warranty Deed evidencing such ownership.

I affirm, under penalties for perjury, that the foregoing representations are true.

  
F. Stephen Schrohe, Manager of  
Culp Ventures, LLC

STATE OF INDIANA       )  
                                  SS:  
COUNTY OF VIGO       )

Personally appeared before me, a Notary Public in and for said County and State, F. Stephen Schrohe, Manager of Culp Ventures, LLC, the duly authorized representative of said limited liability company, who acknowledges the execution of the above and foregoing Affidavit, after being duly sworn upon his oath and after having read this Affidavit.

WITNESS my hand and notarial seal this 6th day of March, 2014.



**KAREN S. MCCAMMON**  
Notary Public  
**SEAL**  
Vigo County, State of Indiana  
My Commission Expires August 12, 2015

This instrument prepared by: William M. Olah, Wilkinson, Goeller, Modesitt, Wilkinson & Drummy, LLP, 333 Ohio Street, Terre Haute, IN 47807.

DULY ENTERED FOR TAXATION  
Subject to final acceptance for transfer

JUN 02 2003

REC'D DEC 2 2003  
EGR Date 05/02/2003 Time 15:12:44  
Mitchell Newton 2P  
Vigo County Recorder 16.00  
Filing Fee: Page 1 of 2  
I 200316357

  
JAMES W. KUMBLER  
VIGO COUNTY AUDITOR

**WARRANTY DEED**

THIS INDENTURE WITNESSETH, That Pfister Realty Investment, LLC ("Grantor"), an Indiana Limited Liability Company organized and existing under the laws of the State of Indiana, CONVEYS AND WARRANTS to Culp Ventures, LLC ("Grantee"), an Indiana Limited Liability Company organized and existing under the laws of the State of Indiana, for the sum of One Dollar (\$1.00) and other valuable consideration paid to an Accommodator, pursuant to an IRC § 1031 Exchange, the receipt of which is hereby acknowledged, the following described real estate in Vigo County, in the State of Indiana, to-wit:

**Section I**

Lots 51, 52, 53, 54 and 55 in Fort Harrison Acres, a subdivision of part of the South West Quarter of Section 2, Township 12 North, Range 9 West, as per plat recorded in Plat Record 16 Page 29 of the records in the Recorder's Office of Vigo County, Indiana. Also that part of the Northwest one-half of the alley adjoining the Easterly ends of the said Lots 51, 52, 53, 54, and 55 as vacated by the Board of Public Works and Safety of the City of Terre Haute, Indiana, by Declaratory Resolution No. 1, 1973, dated March 12, 1973, in Miscellaneous Record 173 Page 305.

Except that part thereof conveyed to City of Terre Haute by deed from the Lincoln National Life Insurance Company dated November 13, 1974 and recorded February 24, 1975 in Deed Record 364 Page 476-2.

Also except that part thereof conveyed to City of Terre Haute by deed from United Investors Corporation dated November 27, 1973 and recorded November 29, 1973 in Deed Record 361 Page 34.

All records in the Vigo County Recorder's Office.

**Section II**

Lots 95, 96, 97, 99, and 100 in George R. Preston's Subdivision of part of Krumbhaar's Subdivision of the North West ¼ of the South East ¼ of Section 33, Township 12 North, Range 9 West, in Terre Haute, Indiana.

Subject to the general real estate taxes prorated to the date of this indenture and all subsequent real estate tax.

Subject to all restrictions, easements and encumbrances of record.

The undersigned person executing this Warranty Deed on behalf of the said Grantor represents and certifies that he is a Member of said limited liability company and has been fully empowered, by proper resolution of the Members of Pfister Realty Investment, LLC to execute and deliver this deed; that the Grantor has full capacity to convey the real estate described herein, and that all necessary action for the making of such conveyance has been taken and done.

IN WITNESS WHEREOF, the said Pfister Realty Investment, LLC has caused this Warranty Deed to be executed this 30<sup>th</sup> day of May, 2003.

**PFISTER REALTY INVESTMENT, LLC**

By:   
Paul J. Pfister, Manager



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STATE OF INDIANA     )  
                                  ) SS:  
COUNTY OF VIGO     )

BEFORE ME, a Notary Public in and for and a resident of said County and State, personally appeared Paul J. Pfister, Member and Manager of Pfister Realty Investment, LLC, an Indiana Limited Liability Company, organized and existing under the laws of the State of Indiana, and acknowledged the execution of the foregoing Warranty Deed for and on behalf of said limited liability company, and who, having been duly sworn, stated that the representations therein contained are true.

WITNESS my hand and Notarial Seal this 30<sup>th</sup> day of May, 2003.

My commission expires:

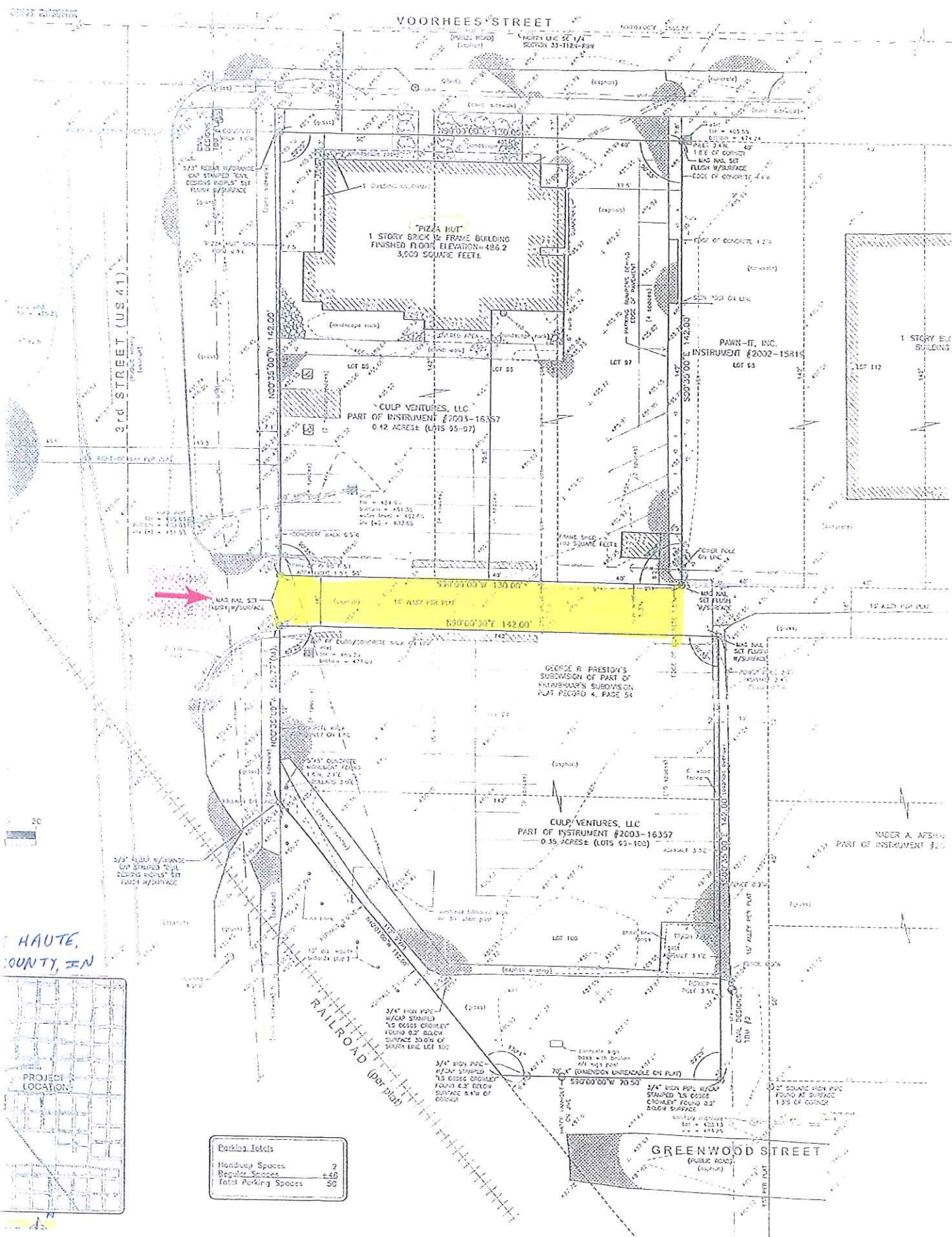
10-18-06

  
\_\_\_\_\_  
Notary Public

Printed: Jeffrey A. Lewellyn  
Resident of Vigo County, Indiana

THIS INSTRUMENT PREPARED BY:  
Jeffrey A. Lewellyn, Attorney  
333 Ohio Street, P.O. Box 800  
Terre Haute, IN 47808

MAIL TAX DUPLICATES TO:  
Culp Ventures, LLC  
c/o Pizza Hut  
P.O. Box 3387  
Terre Haute, IN. 47803



TO THE CLERK OF THE CITY OF TERRE HAUTE:

RE: Petition to Vacate a Portion of Public Alley Filed by Culp Ventures, LLC

PRAECIPE REQUESTING SERVICE OF NOTICE

GENTLEMEN:

On behalf of Culp Ventures, LLC, the owner of Lots 95, 96, 97, 99 and 100 in George Preston's Subdivision of part of Krumbhaar's Subdivision of the North West ¼ of the South East ¼ of Section 33, Township 12 North, Range 9 West in Terre Haute, IN, who has concurrently herewith filed a Petition to vacate a portion of a public alleyway, we request that you give notice of the filing of this Petition and of the time and place of hearings thereon by the Common Council of the City of Terre Haute in accordance with I.C. 36-7-3-12 by:

A) Causing notice insubstantially the form attached hereto to be published in the Terre Haute Tribune-Star in accordance with I.C. 5-3-1; and

B) By mailing a copy of said notice by certified mail return receipt requested to the following owners of land abutting the alley portion proposed to be vacated:

Culp Ventures, LLC  
P.O. Box 2038  
Terre Haute, IN 47802

Pawn-It, Inc.  
329 E. Voorhees St.  
Terre Haute, IN 47802


Pawn-It, Inc.  
P.O. Box 10278  
Terre Haute, IN 47801

--and to cause proof of the publication thereof to be filed in this cause, together with the Clerk's return showing publication and mailing accordance herewith.

Respectfully submitted,

Wilkinson, Goeller, Modesitt, Wilkinson & Drummy, LLP  
333 Ohio Street  
Terre Haute, IN 47807  
Telephone: (812)232-4311  
Facsimile: (812)235-5107

By



William M. Olah #9738-84



## Receipt

The following was paid to the City of Terre Haute, Controller's Office.

Date: 3/7/2014

Name: Culp Ventures

Reason: Alley Vacate

TERRE HAUTE, IN  
PAID

MAR -7 2014

CONTROLLER

Cash: \_\_\_\_\_

Check: \$5.00

Credit: \_\_\_\_\_

Total: \$5.00

Received By: Allen LB

**CITY CLERK OF TERRE HAUTE  
ROOM 102 CITY HALL  
TERRE HAUTE, IN 47807  
812-232-3375**

To: Street Department, City of Terre Haute

Special Ordinance 7, 2014

March 18, 2014

In accordance with General Ordinance 7, 1990, the City Clerk's Office must poll various departments in regard to the closing of a street or alley. Please review the attached ordinance and indicate any problems you see with the proposed closing. If there are any problems, please write in the space below. Return to the City Clerk's Office by April 4, 2014.

☒ No Problems Noted

☐ Problems as noted below

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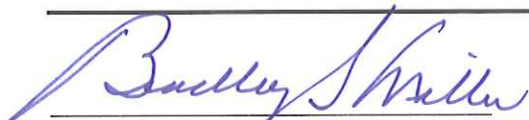
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(Signature)

BRADLEY S. MILLER  
(Printed name)

TRANSPORTATION DIRECTOR  
(Title)

3/25/14  
(Date)

**CITY CLERK OF TERRE HAUTE  
ROOM 102 CITY HALL  
TERRE HAUTE, IN 47807  
812-232-3375**

To: **TERRE HAUTE CITY POLICE DEPARTMENT**

Special Ordinance 7, 2014

March 18, 2014

In accordance with General Ordinance 7, 1990, the City Clerk's Office must poll various departments in regard to the closing of a street or alley. Please review the attached ordinance and indicate any problems you see with the proposed closing. If there are any problems, please write in the space below. Return to the City Clerk's Office by April 4, 2014.

X No Problems Noted

\_\_\_\_\_ Problems as noted below

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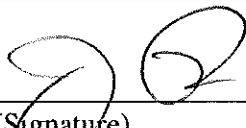
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(Signature)  
JOHN PLASSE  
(Printed name)

CHIEF OF POLICE  
(Title)  
3-21-14  
(Date)




**CITY CLERK OF TERRE HAUTE  
ROOM 102 CITY HALL  
TERRE HAUTE, IN 47807  
812-232-3375**

To: **TERRE HAUTE FIRE DEPARTMENT**

Special Ordinance 7, 2014

March 18, 2014

In accordance with General Ordinance 7, 1990, the City Clerk's Office must poll various departments in regard to the closing of a street or alley. Please review the attached ordinance and indicate any problems you see with the proposed closing. If there are any problems, please write in the space below. Return to the City Clerk's Office by April 4, 2014.

 No Problems Noted

\_\_\_\_\_ Problems as noted below

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(Signature)  
Jeffrey W. Fisher  
(Printed name)

FIRE CHIEF  
(Title)  
3-20-14  
(Date)

**CITY CLERK OF TERRE HAUTE  
ROOM 102 CITY HALL  
TERRE HAUTE, IN 47807  
812-232-3375**

To: **Engineering Department, City of Terre Haute**

Special Ordinance 7, 2014

March 18, 2014

In accordance with General Ordinance 7, 1990, the City Clerk's Office must poll various departments in regard to the closing of a street or alley. Please review the attached ordinance and indicate any problems you see with the proposed closing. If there are any problems, please write in the space below. Return to the City Clerk's Office by April 4, 2014.

           No Problems Noted

  X   Problems as noted below

Vacating this alley would create a  
dead end alley because the south leg of  
the remaining alley does not lead to a  
continuous City right-of-way.

Marcus E. Maurer  
(Signature)

Marcus E. Maurer  
(Printed name)

Staff Engineer  
(Title)

3/19/2014  
(Date)



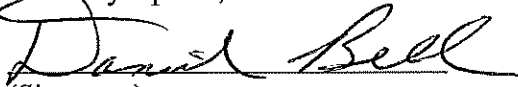
**CITY CLERK OF TERRE HAUTE  
ROOM 102 CITY HALL  
TERRE HAUTE, IN 47807  
812-232-3375**

To: **Building Inspector, City of Terre Haute**

Special Ordinance 7, 2014

March 18, 2014

The street/alley as noted on attached ordinance needs posting at least ten (10) days prior to passage of ordinance. Please indicate posting date and return to the City Clerk's Office by April 4, 2014.

  
(Signature)

Daniel Bell  
(Printed name)

Lead Inspector  
(Title)

3-20-2014  
(Date Posted)

**CITY CLERK OF TERRE HAUTE  
ROOM 102 CITY HALL  
TERRE HAUTE, IN 47807  
812-232-3375**

To: **TERRE HAUTE CITY POLICE DEPARTMENT**

Special Ordinance 7, 2014

March 18, 2014

In accordance with General Ordinance 7, 1990, the City Clerk's Office must poll various departments in regard to the closing of a street or alley. Please review the attached ordinance and indicate any problems you see with the proposed closing. If there are any problems, please write in the space below. Return to the City Clerk's Office by April 4, 2014.

X No Problems Noted

\_\_\_\_\_ Problems as noted below

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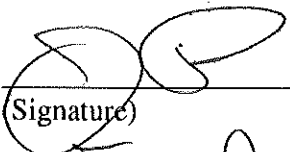
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(Signature)  
John Plasse  
(Printed name)

CHIEF OF POLICE  
(Title)  
4.9.14  
(Date)